

Decision **DRAFT DECISION OF ALJ FUKUTOME** (Mailed 11/3/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN JOSE WATER COMPANY (U 168 W) for an Order authorizing it to increase rates charged for water service by \$25,793,000 or 18.20% in 2004; by \$5,434,000 or 3.24% in 2005; and by \$5,210,000 or 3.01% in 2006.

Application 03-05-035
(Filed May 23, 2003)

**INTERIM DECISION ON SAN JOSE WATER COMPANY'S
REQUEST FOR AN INTERIM RATE INCREASE**

Summary

Based on the provisions of Pub. Util. Code § 455.2, this decision grants the request of San Jose Water Company (SJWC) to establish interim rates for water service effective January 1, 2004. Such rates will be determined by increasing existing rates by the projected inflation rate for 2004, will be subject to refund and will be adjusted upward or downward, back to the effective date, consistent with the final rates adopted by the Commission in SJWC's pending general rate case (GRC) proceeding.

Background

SJWC filed its application for a test year 2004, test year 2005 and attrition year 2006 GRC on May 23, 2003. The company did not start this proceeding by January 31, 2003, as it otherwise would have, due to a request by the management of the Office of Ratepayer Advocates (ORA). The company agreed to delay its filing, in order for ORA to more evenly distribute its workload

during 2003. In its application, SJWC included a procedural schedule based on the current rate case plan¹ for a single district company. The rate case plan provides for a decision 214 days or more from the application filing date. In this case, a final decision could therefore be anticipated sometime after December 23, 2003. SJWC stated that it was a virtual certainty that a decision would not be issued in 2003, noted the provisions of § 455.2² and requested the Commission rule that the company is entitled to interim rates effective January 1, 2004 and may file an advice letter to implement such rates on or after November 1, 2003.

At the August 22, 2003 prehearing conference, a proposed schedule was discussed that would have had a final decision issued in the March 2004 timeframe. ORA stated that it does not oppose granting interim rates to SJWC. However, while acknowledging the applicability of § 455.2, ORA suggested the Commission does not have to invoke § 455.2 for that purpose. Instead, ORA postulated that its request for the filing delay is sufficient reason for the Commission to grant the interim relief.

¹ The water rate case plan was adopted by D.90-08-045.

² Section 455.2 became effective January 1, 2003 and provides for interim rate relief when the Commission is unable to issue its final decision on a general rate case application of a water corporation with greater than 10,000 service connections in a manner that ensures that the decision becomes effective on the first day of the first test year in the application. However, if the presiding officer in the case determines that the Commission's decision cannot become effective on the first day of the first test year due to actions by the water corporation, the presiding officer or Commission may require a different effective date for the interim rates or final rates. When interim rates are allowed under § 455.2, the applicant may file a tariff implementing rates that are calculated by increasing existing rates by an amount equal to the rate of inflation. The interim rates are subject to refund and are to be adjusted upward or downward back to the interim rate effective date, consistent with the final decision.

By letter of September 5, 2003, ORA requested that the proceeding be delayed further, such that its testimony would not be due until November 17, 2003 and evidentiary hearings would not begin until January 16, 2004. Those dates were included in the procedural schedule adopted in the September 12, 2003 Assigned Commissioner's Scoping Memo and Ruling. A likely timeframe for a final decision is May 2004.

Discussion

SJWC delayed its filing and agreed to further procedural delays in order to accommodate ORA. We appreciate cooperation between the parties in matters such as this. It is reasonable to ensure, to the extent possible, that the company is not financially harmed for doing so. This can be accomplished by establishing interim rates, as provided in § 455.2.

Since SJWC filed its application after the § 455.2 effective date of January 1, 2003 and has significantly more than the minimum required 10,000 service connections,³ we conclude that § 455.2 is specifically applicable in this case. Section 455.2 provides a legal basis for implementing interim rates and specifies the timing and rate mechanism to do so. Without this code section, the basis and authority for interim relief would need to be explored in depth and ratemaking alternatives would need to be considered. We do not feel that, on its own, ORA's request to delay the proceeding provides a sufficient basis to grant interim rate relief in the manner proposed by SCWC. Section 455.2 does provide that basis.

³ According to SCWC's filing, the average number of metered services in 2002 was 214,726.

Section 455.2 also specifies that, if delay in issuing the decision was due to actions of the utility, the presiding officer or Commission may set an effective date for interim rates other than January 1 of the first test year. In this case, we will not alter the January 1, 2004 effective date. Even though SJWC filed later than it normally would have, there was still sufficient time under the water rate case plan to process the case and issue a final decision by the end of 2003. Subsequent delay, which pushed the probable decision date well into 2004, was not the result of utility actions. Granting SJWC interim rates, effective January 1, 2004 is reasonable and consistent with § 455.2.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments on the draft decision were filed.

Assignment of Proceedings

Loretta M. Lynch is the Assigned Commissioner and David K. Fukutome is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SJWC has more than 10,000 service connections.
2. SJWC delayed the filing of its GRC for test years 2004 and 2005 from January 2003 to May 2003, at the request of ORA.
3. Under the existing 1990 Rate Case Plan for large water utilities, SJWC's GRC application filing date of May 23, 2003 results in a projected Commission decision date of December 23, 2003.
4. Due to resource constraints, ORA requested a further delay in the procedural schedule, specifically requesting an interested party mailing date of November 17, 2003 and evidentiary hearings to begin on January 12, 2004.

ORA's request was reflected in the Assigned Commissioner's Scoping Memo and Ruling issued on September 18, 2003.

Conclusions of Law

1. The interim rate provisions of § 455.2 are applicable to SJWC.
2. Due to procedural delays that were not caused by the actions of SCWC, a final decision, for test year 2004, will not be issued by January 1, 2004.
3. SJWC should be authorized to file a tariff with the Commission implementing interim rates consistent with the provisions of § 455.2.
4. The interim rates should be effective January 1, 2004.

INTERIM ORDER

IT IS ORDERED that:

1. San Jose Water Company (SJWC) is entitled to file, by advice letter, a tariff with the Commission implementing interim rates effective January 1, 2004, and continuing until the Commission issues a final decision on SJWC's pending GRC application or ordered otherwise.
2. The interim increase in rates shall be no greater than an amount equal to the rate of inflation as compared to existing rates. The rate of inflation shall be calculated using the most recent Consumer Price Index for All Urban Consumers (CPI-U) US City Average, All Items maintained by the U.S. Department of Labor.
3. The interim rates shall remain subject to refund and shall be adjusted upward or downward, back to the interim rate effective date, consistent with the final rates adopted by the Commission.

4. This proceeding remains open for resolution of the pending application.

This order is effective today.

Dated _____, at San Francisco, California.